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08/316422			
APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY/DOCKET NO.
08/316,422	09/30/94	MCDONALD	

33M1/1023
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DEAN EXAMINER

ART. UNIT 2 PAPER NUMBER

13
10/23/96

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 8-12-96
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above, claim(s) 2, 11 & 18 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 3-10, 12-17 & 19-23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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Claims 1 and 3 - 7 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, applicant never positively recites the optical lens. In line 10, applicant recites means for mounting the flexible optical lens but does not positively recite the flexible optical lens and thereby no proper antecedent basis is provided for the flexible optical lens in line 12.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 3 - 10, 12 - 17, and 19 - 23 are rejected under 35 U.S.C. § 103 as being unpatentable over Aulgur et al. in view of Eros MAGIC quick donning mask and Schwab. Aulgur et al. teach a

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quick donning oxygen face mask having a flexible face seal (12 & 18) having a plurality of mounting points (Fig. 1), a means to attach a regulator (13), an inflatable harness (20), extending around a neck of a user, an adjustable strap (14), and passages between regulator and seal (Fig. 1). Therefore, it appears that Aulgur et al. teach the claimed device except for the flexible lens and the anti fog means. Schwab teaches a mask having a flexible optical lens which is foldable (43). Note that Eros MAGIC quick donning mask teaches anti-fog means (in the paragraph, above man trying on the mask). It would have been obvious to one of ordinary skill in the art to provide the mask of Aulgur et al. with such a lens as taught by Eros Magic in order to protect the eyes. In addition, it would have been obvious to one of ordinary skill in the art to provide a flexible optical lens as taught by Schwab for better stowage capability as the only structure not flexible in Aulgur et al. is the lens. It would have been obvious to one of ordinary skill in the art to have provided the Aulgur et al. device with such anti-fog capability as taught by Eros MAGIC quick donning mask as an obvious means for keeping the lens clear. In regard to claims 3 & 12, where it is shown that one inflatable harness is known in the art it would be obvious to one of ordinary skill in the art to have provided a plurality of such harnesses. Also note Piljay et al. (in the pertinent art). With respect to claims 4, 5, 13, 14, 20 and 21 see Col 5, lines 5+ of Aulgur et al. With respect

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to claim 6, and 16 abrasion resistant coating is well known in the art and such coating is widely available in any optical store. With regard to claim 7, note element #30 of Aulgur et al.

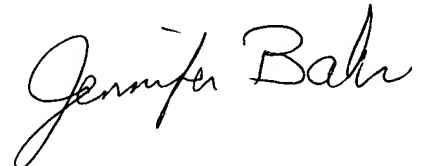
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Figgiani et al. - note the claims;
Wagner et al - note flexible lens;
Swann - note flexible visor; and
Wiseman - note element 16.

Applicant's arguments filed August 12, 1996 have been fully considered but they are not deemed persuasive to any error in the above rejections. Specifically, applicant's arguments are now moot do to the new grounds of rejection.

Any inquiry concerning this communication should be directed to Bill Deane at telephone number (703) 308-2868. In addition, facsimile transmissions should be directed to Bill Deane at facsimile number (703) 308-2864.

WJD
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19Oct96



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